

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

ROBERT L. LINDSAY, ET AL.,

Plaintiffs,

VS.

Case No 2:04CV76

MARSHALL L. KING, ET AL.,

Defendants.

**ORDER, OPINION AND REPORT AND RECOMMENDATION**

**OPINION/REPORT AND RECOMMENDATION**

On the 27<sup>th</sup> day of July, 2005 came the parties to the within civil action by their respective legal counsel for a FRCivP 16 telephone status conference and motion hearing in accord with the July 5, 2005 Order referring the case to the undersigned for pre-trial development.

During the FRCivP 16 conference and hearing counsel for Plaintiff orally moved the Court for an order establishing a deadline for mediation to be completed. After affording counsel for the Defendants an opportunity to be heard and in consideration of the fact that the District Judge had previously indicated that mediation would be required once one of the parties requested it, it appropriate to **GRANT** Plaintiff's oral motion for mediation.

The parties shall select a private mediator and, to the extent such private mediator is available, shall mediate the remaining issues in the within civil action on or before September 15, 2005. The costs of such mediation shall be born equally by all parties thereto it being recognized that some parties have settled and are pending dismissal from the within action by an Order, the terms of which are in dispute.<sup>1</sup>

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<sup>1</sup>The resolution of the language in the proposed dismissal orders that is in dispute is not referred to the Magistrate Judge and will be decided by the District Judge.

It is so **ORDERED**.

The Clerk of the United States Court for the Northern District of West Virginia is directed to provide a copy of this Order and Opinion/Report and Recommendation to all counsel of record.

DATED: July 27, 2005

/s *John S. Kaull*

JOHN S. KAULL

UNITED STATES MAGISTRATE JUDGE